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Judicial Advisement on Secularism in India and USA- A Comparative Study

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Abstract

The framers of Indian Constitution endorsed the fundamental belief that the government should not meddle in issues that are primarily religious in nature, neither should it support any specific religion, nor should it show preference or bias towards any specific religion. Therefore, with 42nd Constitution Amendment Act of 1976 the word "secular" was introduced to preamble, stating that "India is a sovereign, socialist, democratic, republic and secular." It highlights the reality that India has no official religion. Additionally, the state will acknowledge and respect all religions without favoring any one in particular. In the United States, the establishment clause in the first amendment to the USA Constitution has been vividly portrayed as establishing a barrier between the Church and State. In this paper, the authors will discuss existence of secularism in both Nations and a comparative analysis shall be conducted related to provisions establishing secularism in India and USA.

Keywords: *India, USA, Constitution, State, Freedom, Religion, Secularism, Judiciary*

INTRODUCTION

Law and religion are two of the many dynamic elements that make up the tale of civilization. "Law and religion" have always worked together, cooperated, and occasionally even engaged in mutual combat to subjugate one another (Iyer, 1984: 9). Naturally, just like everywhere else, the third world has seen changes in the way that religion and law interact with one another over time. Centuries have passed between the previous era, in which religion had complete legal authority, and the current era, in which the two social control mechanisms have switched places (Mahmood, 2008: 1-2).

Every religion seeks to satisfy the universal human need for goodness and harmony. Man accomplishes this purpose by expressing his beliefs and attitudes in a variety of ways (Dobrin, 2002: 4). Two principles that are widely accepted in contemporary politics around the world are "democracy" and "rule of law." Laws pertaining to religion also generally follow these two principles (Zhuoxinping, 2009: 519). It is challenging to assess which social constructs—religion, the government's constitution, or legal requirements—have the biggest impact on people's lives and the functioning of society (Bix, 1996: 223-240).

Secularism can have one of two forms. In the first, religion and the state are completely kept apart to the point where there is a "impassable wall" separating the two (much like in the USA). Such a model forgoes state interference in questions of religion and vice versa. In the alternative paradigm, the state is equidistant from all religions and is supposed to treat them equally. This concept, sometimes known as "non-discriminatory," is especially applicable to cultures with multiple religions, such as those in India. The latter paradigm permits State action on the grounds of social fairness and public order, in contrast to the former (Akbar, 2010: 1).

RESEARCH METHODOLOGY

The Methodology of the present study has been designated in such a way so that the socio-legal aspect of secularism and its practices in India and USA may be analyzed. In order to examine analytically the provisions

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of Constitution and judiciary pertaining to the abovementioned aspect of the study, secondary information/ sources have been received upon. A major part of this work relate to the theoretical aspect of the study. Decided cases by the courts pertaining to freedom of Religion and secularism vis-a-vis its practices have been analyzed critically. Research on the topic is legal and the methodology is doctrinal. The sources of this research paper have based on books, journals, case laws, internet sites, etc.

Rationale for Opting Comparative Study between India and USA

Partha Chatterjee, an expert on Indian politics, has delineated three fundamental principles that characterize a secular state. The first is the principle of freedom, which requires the government to permit the practice of any religion, provided that it simultaneously protects a number of essential rights. The second is the equality principle, which states that the state does not prioritize any particular religion above another. The third is the neutrality principle, which basically states that religious organizations shouldn't be given preference by the government over non-religious ones. The 'wall of separation' theory in the US Constitution states that the government should not interfere in religious matters. These ideas, combined with those of freedom and equality, constitute the basis of this doctrine.

The existence of separate personal laws for religious communities, state participation in religious institutions and practices, and reservations for caste-defined groups are still significant issues that have worried Indian secularism scholars over 75 years of independence. It is becoming clear that secularism in India differs from that of the United States or Europe. There are various distinctions between the Indian Constitution and the model of separation of church and state. In addition, there has been debate recently over the very definition of secularism. It is widely recognized that there are several viable models of secularism outside the separation of church and state.

These factors forced the researchers to find the differences and similarities in American and Indian Secularism. This study will be beneficial to academician and researchers in future.

Indian Judiciary and Rationalization of Religion

As social activists routinely use the legal system to try and establish their beliefs and interests as law, courts are becoming more and more important in contemporary democratic reality (Liviatan, 2009: 583). The Indian Supreme Court is crucial to the interpretation of the Constitution, just like it is in any country with a written constitution. But just like in the US, Supreme Court decisions frequently conflate the distinction between legislation and legal interpretation (Sen, 2007: 6). According to the Indian Supreme Court's "basic structure" concept, which was established in the seminal case of Kesavananda Bharti v. State of Kerala, AIR 1973 SC 1461, any legislation that the court determines to be in conflict with the fundamental principles of the Constitution is subject to nullification. The court than becomes the final arbiter of the Constitution.

Scholars like Mahajan, who contend that "the Indian Constitution as were as subsequent interventions of the Supreme Court have tried to ensure that religious organisations and groups are not discriminated against in the public domain (Mahajan, 1998: 69)," have different views on the court's role in limiting religious freedom and imposing homogeneity. The justices of the Supreme Court saw themselves as virtuous defenders of secularism. Judges' writings outside of court and court decisions both reveal this.

The Indian Constitution does not define religion, and any strict definition of it would be difficult to apply. The way that Indian courts have attempted to define religion in relation to the Constitution is significant. The Supreme Court of India in Commissioner, Hindu Religious Endowments Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt, AIR 1954 SC 282, Para 17 defined religion as:

> "Religion is certainly a matter of faith with individuals or communities and it is not necessarily theistic. A religion undoubtedly has its basis in a system of belief or doctrinal which are regarded by those who profess that religion as conductive to their spiritual well-being, but it would not be correct to say that religion is nothing else but a doctrine or belief".

The Supreme Court of India noted in Ratilal Panachand Gandhi v. The State of Bombay and Others, AIR 1954 SC 388:

"A religion is not merely an opinion, doctrine, or belief." It also manifests externally in actions. Religion is made up of both faith and the conviction of specific doctrines, as well as religious practices and behaviours performed in support of those beliefs.

The Constitution Bench of the Supreme Court of India examined religion in S. P. Mittal v. Union of India, AIR 1983 SC 1 and stated that:

"Religion has reference to one's views of his relations to his creator and to the obligations they impose of reverence for his being and character and of obedience to his will."

In P.M.A. Metropolitan and others v. Moran Mar Marthoma and another, 1995 (4) SCC 286 the word religion was described as:

"Belief in religion is what connects people's spiritual essence to supernatural beings. It encompasses rituals as well as acts of worship, conviction, faith, and dedication. A person's religious right is their ability to practice, preach, and publicly express their particular faith.

"Essentially, religion is a matter of personal faith and belief of personal relations of an individual with what he regards as cosmos, his maker or his creator which, he believes, regulates the existence of insentient beings and the forces of the universe," the court stated in A.S. Narayana Deekshitulu v. State of Andhra Pradesh and Others.

According to the Court in T.K. Gopal Alias Gopi v. State of Karnataka, 2000 (6) SCC 168, religion is a matter of faith that originates from the core of one's heart and mind. Religion is an object of diligent devotion, trust, and pietism that links the spiritual nature of man to a supernatural being. The Supreme Court declared in Ms. Aruna Roy and Others v. Union of India and Others that "the word religion has different shades and colours." Dharma, or responsibility, is a significant shadow; that is, duty to one's soul and society. It should not be interpreted incorrectly, nor could it be argued that secularism would be in danger if it were applied to the national education program.

So, religion is a matter of belief and doctrine, concerning the human spirit, expressed overtly in the form of ritual and worship.

Introduction of Secularism in the Constitution of India

When the Indian Constitution was first written, its preamble did not use the word "secular" in its brief description of the nation, which it dubbed a "Sovereign" Democratic Republic, even though it clearly incorporated all of the fundamental concepts of secularism into various clauses of the document. After twenty-five years, India's secularism was fully established through State practice and judicial decisions. The Constitution (Forty-Second Amendment) Act, 1976 amended the preamble to the Constitution by adding the word "secular" to the word "socialist," designating India as a "Sovereign Socialist Secular Democratic Republic." It is likewise incorrect to believe that the sections of the Constitution that deal with secularism are neatly and individually wrapped in the sections that start with Article 25 and end with Article 30. Undoubtedly, the freedom of religion, as well as the rights to culture and education, is significant components of Indian secularism. However, Indian secularism goes well beyond the rights enumerated in the aforementioned clauses (Rengarajan, 2010: 17).

Mutual understanding is a prerequisite for religious tolerance, which is the cornerstone of Indian secularism. If we are aware of the fundamentals of both our own and other people's religions, we can come to this knowledge of one another. Today, secularism is acknowledged as the foundational idea governing State activity and policy. Indian secularism is a result of our societal mores, individual mindsets, historical context, and familial obligations. The Constitution of India provides equal protection to all religions. As a result, the legislation has established religious endowment trusts, waqf boards, etc. Positive secularism is the cornerstone of the egalitarian, progressive society that the Constitution aims to create. The important thing to remember is that the Indian State does not endorse any certain religion or group of religions. It may be argued, therefore, that

our hopes for socialism were merely idle hopes or naive optimism (Nehru, 1961: 543). **Secularism to be the Fundamental Law of the Land**

Secularism evolved into a method and deliberate strategy for securing the basic needs of human existence in order to free the human spirit from the shackles of ignorance, superstition, and servitude that have held humanity behind. Maximizing human welfare and pleasure is the aim of any civilized democratic society, and a happy organization would be ideally suited to achieve this goal. In Union of India v. S.R. Bommai, AIR 1994 SC 1918, the Supreme Court of India quoted:

"Secularism is one of the basic features of the Constitution while freedom of religion is guaranteed to all persons in India, from the point of view of the State, the religion, faith or belief of a person is immaterial," noted B.P. Jeevan Reddy, J. (for himself and on behalf of S.C. Agrawal, J., Pandian, J.Concurring). Everyone is equal in the eyes of the state and has a right to equitable treatment. There is no place for religion in concerns of state. There cannot be a political party and a religious party at the same time. Religion and politics are incompatible. Any State Government that violates the Constitutional mandate by pursuing un-secular policies or an unclear course of action exposes itself to legal action under Article 356. Thus, secularism is more than just tolerating religion with a passive attitude. The idea of treating all religions equally is one that is positive. Some have characterized this stance as benevolent neutrality or as neutrality towards religion. This might be an idea that sprang from liberal western ideas, or it might be an enduring religion that the Indian people have always had, according to some. That's not important; what matters is that it's a fundamental purpose and characteristic of the Constitution. Simply put, any action that deviates from this basic policy is unconstitutional. This does not imply that the State has no authority to speak about religion at all. It is possible to pass laws governing the secular operations of mosques, temples, and other houses of worship. There is no doubting the Parliament's authority to restructure and rationalize personal laws. Article 44's directive has not yet been carried out.

The Supreme Court of India wisely held in M. Ismail Faruqui v. Union of India, AIR 1995 SC 605, 630:

How can the promises of social justice, liberty of belief, faith, or worship, and equality of status and opportunity be fulfilled if the State completely disregards a person's religion, faith, or belief when addressing him, his rights, duties, and entitlements? Thus, secularism is more than just a complacent attitude towards religion tolerance. The idea of treating all religions equally is one that is positive. Some have characterized this stance as benevolent neutrality or as neutrality towards religion.

This can be an idea that emerged from liberal Western ideas, or it might be an enduring conviction that the Indian people have always had. That doesn't matter. The fact that it is a fundamental objective and characteristic of the Constitution, as confirmed in the cases of Indira N. Gandhi v. Raj Narain, AIR 1975 SC 2299, and Kesavananda Bharti v. State of Kerala, (1973) 4 SCC 225: AIR 1973 SC 1461, makes it significant. Simply put, any action that deviates from this basic policy is unconstitutional. This does not imply that the State has no authority to speak about religion at all. It is possible to enact laws controlling the secular operations of mosques, temples, and other houses of worship.

Secularism as a Part of the Basic Structure of the Constitution of India

In a seminal ruling on secularism, the Supreme Court considered S.R. Bommai v. Union of India, AIR 1994 SC 1918. In this instance, a bench of nine judges reaffirmed that secularism was an integral element of the political system and maintained that secularism unquestionably aimed to keep politics and religion apart. Along the lines of the US Constitution's non-establishment or disestablishment clause, the court rejected the idea that religion and the law should be kept apart in order to maintain control over practices that could be characterized as exploitative but are disguised as religious. Endless streams of people from various racial and religious backgrounds have arrived in India over the ages, adding to the country's rich cultural variety. The Hindu religion evolved into a resilient nation of religious tolerance by assimilating its rich cultural diversity and absorbing it with tolerance.

The Supreme Court ruled in I. R. Coelho v. State of Tamil Nadu AIR 2007 SC 861 that secularism is a conclusion that may be inferred from a number of articles that grant fundamental rights. The court decided

that since each of the Fundamental Rights in Part III either stands for a principle or a specific detail, "if the secular character is not to be found in Part III, it cannot be found anywhere else in the Constitution."

The fundamental tenet of many constitutionally guaranteed rights and ideals is secularism. Secularism, democracy, reasonableness, social justice, and other expansive axioms serve as connecting elements for essential rights enumerated in Articles 14, 19, and 21. The Parliament cannot change these principles (M. Nagaraj v. Union of India, AIR 2007 SC 71).

The Supreme Court of India ruled in Santosh Kumar v. Secretary of Ministry of HRD AIR 1995 SC 293 that a state's accommodation of religious beliefs does not transform it into a theoretical or religious state. Secularism is a form of faith that arises from reason and makes it possible to recognise the essential conditions for all aspects of human growth. Since secularism respects the pious, the agnostic, and the atheist equally, it is neither pro- nor anti-god.

Secularism vis- a- vis '*Sarva Dharma Sambhava*'- Equal Respect for all Religions

Secularism has a different meaning in India; it is the binary opposite of communalism. 'Sarva Dharma Sambhava' is the title. The Indian conception of secularism holds that every faith should be accorded equal respect and treatment by the state. There is no religious hegemony in this conception of the state since no religion is upheld as the official religion. The idea of secularism in India involves actively promoting religious plurality rather than merely allowing it to exist. This proactive promotion highlights how sovereign a free and open state is, removing the need for it to fear ideas and faiths or that they may subvert it (Majid, 1985: 90–99).

The primary architect of India's relationship between the State and religion was Jawaharlal Nehru. Gandhi believed that the reformed, ethnically purified individual would be the key to building a better society, if not the perfect society, while Nehru believed that the best way to accomplish the same aim was to create appropriate institutions. Nehru's belief that religion impedes human society's inherent ability to change and progress is exemplified by a number of his writings and speeches. These include his assertion that the belief in a supernatural agency that orders everything has led to a certain amount of irresponsibility and that sentimentality and emption has replaced rational thought (Nehru, 1961: 543). Positively, Nehru noted that the State provides opportunities and protection to all religions and civilisations, fostering an environment of mutual respect, cooperation, and equality for all religious communities. Though it may not sit well with puritans, the core principle of Indian secularism is Sarva Dharma Samabhava, or "Equal Respect for All Religions." Rengarajan, 2010): 15).

Its other rulings glaringly lacked the zeal we observed in the Bommai case to defend and uphold secularism. In the case of M.Ismail Faruqui v. Union of India, AIR 1995 SC 605, for example, the court seemed to have accepted a secularism idea that found support in Hindu texts. Speaking on behalf of C.J. Venkatachaliah and J. Ray, J. Verma defended the secularist concept of "Sarva Dharma Sambhava," or tolerance for all religions, which had its foundations in Akbar's Din-I-lahi (1995 SC 605) as well as the Yajurveda, Atharvaveda, and Rigveda.

The court even went so far as to state that India's secularism survives because of the tolerance shown to the majority-Hindu population. The court's approach, which was based only on religious texts, undermines secularism. It presents secularism as tolerance that is unwavering in support of Hindu interests and incorporates other religions into its worldview. Such a view of secularism is incompatible with pluralistic ideals and minority interests.

The Court stated in Aruna Roy v. Union of India, AIR 2002 SC 3176, that secularism is open to the positive interpretation that is growing, including tolerance and respect for many religions. Secularism can be applied in two ways: either positively, by encouraging a certain group of religious people to respect and appreciate the beliefs and religions of other people, or negatively, by taking a completely neutral stance towards religion. The Supreme Court further stated, paraphrasing Gandhi ji, that secularism is "Sarva Dharma Sambhava," which means respect and equality for all religions. However, we misinterpreted it to suggest that Sarva Dharma Abhav refutes all religions. It was also said that if the fundamental beliefs of the major world religions are researched

and understood, the idea of secularism is not in threat. Value-based education will support the country's efforts to combat extremism, animosity, violence, deceit, and corruption.

Thus, the Indian notion of "secularism" has been safeguarded, upheld, and explained by the Supreme Court of India.

Law and Religion in United States of America

"America is the only country in which it has been possible to witness the natural and tranquil growth of society and where the influences exercised on the future condition of States by their origin is clearly distinguishable," observed the astute French visitor Tocqueville in 1831 (Olmstead, 1961: 1).

The religious legacy of ancient Europe was taken up, shaped, and integrated on the American continent over a 350-year span. Emerging from an apparent tangle of disparate and frequently at odds philosophies was a faith that was distinctively American even if it retained elements of its European heritage Olmstead (1961: 1).

The historical overview suggests that civil and religious institutions were universally united prior to American colonization. When tolerance was achieved in the various American colonial governments, it only applied to the exclusion of a specific group of Christians from the civil institutions—not to Christianity per se. A specific form of Christianity (Protestantism) was required as a prerequisite for office, and a Christian purpose is explicitly declared in the Rhode Island province's fundamental statute (Cornelison, 1895: 23-30).

The most stringent rules were made to ensure its establishment, the Christian nature of the government was simultaneously most strongly declared, and the principle of toleration was most firmly maintained. Although there was no distinction made between the various branches of Protestantism in the colonial governments that allowed for more religious freedom, they were protestant in their opposition to Roman Catholicism. No distinction was established between the many Christian Church factions in those days of greatest freedom, but they identified as Christians in opposition to all other religions and against unbelief. Regarding Christianity, not a single person expressed negativity or neutrality (Cornelison, 1895: 23-30).

It cannot be claimed that religion flourished during the colonial age in the middle colonies of New York, New Jersey, Pennsylvania, and Delaware, despite certain affluent periods during which the churches were blessed by the labours of some very godly ministers (Baird, 1855: 22). Furthermore, far than being better than in the middle, the situation was worse in the colonies in the South. However, the Saviour had his devoted followers in that place, and Whitfield and John Wesley's visits were also greatly advantageous to the preservation of piety in the churches (Baird, 1855: 22).

The fact that so many of the colonies' constitutions included the idea of combining the Church and the State was a major misfortune for the cause of pure religion. In almost every southern colony, including Virginia, the Episcopal Church was founded by legislation and received official support from the government. That Church in America was governed by the Bishop of London up until the Revolution. In England, all of its ministers were required to be consecrated to the holy office. More than a century passed in Virginia with absolutely no tolerance whatsoever for Protestant denominations other than the Episcopal Church, or "Church of England," as it was more popularly known. Finally, if we may use that phrase, Baptist and Presbyterian clergy had to fight their way into that large colony. A few of the pioneering Baptist ministers were privileged to preach Christ from the jail windows within that colony, while the early Presbyterian ministers encountered harsh treatment. Despite the liberal views of John Locke and Lord Calvert, conditions in the Carolinas and Maryland weren't always much better (Baird, 1855: 23).

Throughout America's colonial past, the government's stance towards particular types of religious belief and worship was occasionally described as being intolerant. Therefore, following a protracted legal battle, the Massachusetts government decided to grant permission for Episcopalians and Baptists, but the Presbyterians were forced to settle for years on end for the relatively lenient permission granted by New York and Virginia. However, in these States, where the equality of all men before the law is made a cornerstone of rights, there has been neither space nor necessity for tolerance for more than a century (Cobb, 1902: 9).

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Freedom of Religion under the Constitution of the United States of America

The Philadelphia Convention in 1787 resulted in the adoption of the current United States Constitution. Once the requisite number of States had ratified it, it became effective in 1789. The Constitution is distinct in a lot of ways. It is among the world's shortest constitutions. It was originally composed of seven Articles, but over the years, twenty-six revisions have been made. One prime illustration of the Constitution's inflexibility is found in it. The American Constitution favours the separation of powers, a Montesquieuan doctrine, in a way that no other constitution in the world has. The United States administration has a wonderful system of checks and balances in place in addition to applying the doctrine of separation of powers (Yuksel and Buyukba, 2023: 68-72).

A declaration of a concept that would distinguish this nation from all others on Earth emerged from that upheaval. And that was the principle: in matters of faith and conscience, man is answerable only to God. No nation had ever embraced it, although individuals had previously held it and the colony of Rhode Island had declared and acted upon it (Snow, 1914: 232–233). This idea originated with the Declaration of Independence, which states that individuals are equal and that it is impossible for one man to control another's religious beliefs and practices. The Federal Constitution's Article VI, which states that "No religious test shall ever be required as a qualification to any office or public trust under the United States," speaks more clearly about this philosophy.

The original version of the United States Constitution's first ten amendments is referred to as the Bill of Rights. The "Bill of Rights," as these changes were called, was ratified on December 15, 1791 (Basu, 2014: 63). James Madison presented a number of legislative articles containing the amendments to the first US Congress (Basu, 2014: 63). Certain freedoms that aren't stated clearly in the main body of the Constitution are listed in the Bill of Rights.

It is significant also that the first amendment to the Constitution of the United States should further deal with the true religious liberty. It reads: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances".

The first amendment's and Article VI's language about religious freedom suggests that the authors intended for religious beliefs to remain unhindered and for religious acts to be unrestricted by the application of legal formalities. This doctrine, which the Anabaptists fought for throughout Europe and the British Isles, leading to the slaughter of thousands of them; this doctrine, whose adoption and application turned many New Englanders into martyrs and forced Roger Williams into exile in order to build a better State and preach a more Christian brotherhood; this doctrine, which the established Church of Virginia fiercely opposed for a century; this doctrine served as the foundation for the fledgling republic of America. One country took on the role of teacher and imparted knowledge to the rest of the world. And everyone on the planet has noticed it. There have been many republics, monarchies have given people constitutional rights and summoned them to legislative assemblies, and countries that have long persecuted and tolerated intolerance are now allowing their citizens the freedom of conscience and the right to practice any religion they choose (Snow, 1914: 232–233).

The Relationship between Church and State: Wall of Separation

In American higher education institutions, a unique class of new degree-granting programs has developed throughout the past 50 years. These initiatives shall be referred to as Church, State, and Society programs for the sake of this investigation. The goal of these programs is to improve understanding of how religious practice

and State power interact and impact society. This area of study is generally and frequently referred to as "Church and State." The issue these programs focus on is so important that academic Emil Brunner has even referred to it as "the greatest subject in the history of the West" (Brunner, 1947: 552).

Relations between the State and the Church have historically been a major cause of political unrest. The stark contrasts between American and European customs in this area are highlighted at this early stage. While American tradition trends towards separation, mainstream Western European tradition is far more in favour of the State accommodating and cooperating with religious organizations. Both paradigms are fundamentally distinct from theocracy and the open hostility of the State towards religious institutions that existed in all communist nations and persist in North Korea, Cuba, and China. These disparities have numerous causes, the most significant of which are societal and historical (Alibasic).

Many Americans think that in the United States, there should exist a wall separating religion and the state. However, this viewpoint is unable to assess the degree to which generally applicable legislation may impede on the exercise of free religion or identify whether a specific State policy is influenced by religion. Furthermore, as Bob Edgar, President of Common Cause and a former General Secretary of the National Council of the Churches of Christ in the USA, has noted, there is no need for persons of faith to remain apart from governments in order to maintain the separation of church and state. Faith can have a significant impact on the decisions made by policy officials. A legislator from a district where there is a high concentration of Baptists may provide votes that are more consistent with the beliefs of their constituents. A Muslim-American Political Action Committee has the ability to petition Congress regarding legislation that impacts American policy overseas or Islamic practices domestically. Every citizen has the right to vote to choose their representative, to submit letters to their senators, and to take an active role in the political process by supporting causes and ideas (DeBartolo and Kadlec).

Probably the most unique principle that the American constitutional system has added to the corpus of political ideas is separation of church and state. When the United States Constitution was added in 1797, with the first Amendment's prohibition that "Congress shall make no law respecting an establishment of religion," no other nation had taken such care to prevent the national government's power from being combined with the power of religion (DeBartolo and Kadlec).

The protestant establishments of England, Ireland, and Scotland drove out dissident religious minorities, who established a large number of the early American settlements. Contrary to popular belief, a large number of European emigrants who fled to the New World agreed that church and state ought to coexist in their new communities. Few instances indicate that people who escaped religious persecution did not view religious dissenters any more tolerantly than those they had fled (Cord, 1988: 3). Thus, in early America, established churches became the norm. According to Robert L. Cord, there were established churches in nine of the thirteen colonies when the American Revolution began in 1775.

The Anglican Church was founded in 1609 in Virginia, 1693 in the lower regions of New York, 1702 in Maryland, 1706 in South Carolina, 1711 in North Carolina supposedly, and 1758 in Georgia. In New Hampshire, Connecticut, and Massachusetts, congregational churches were founded. But only Georgia, South Carolina, Connecticut, Massachusetts, and New Hampshire still had their established churches by the time the constitutional convention met in Philadelphia in the summer of 1878. During the Revolutionary War, the Anglican Church was suppressed in Virginia in 1786 and in New York, Maryland, and North Carolina. Following the passage of the Federal Constitution in 1788, established churches were eliminated in a number of states. This culminated in the dissolution of the congregational church in Connecticut in 1818, New Hampshire in 1819, and Massachusetts in 1833 (Cord, 1988: 3).

For those in the nascent United States worried about the national government's stance on the Union of Church and State. A valuable legacy was left by James Madison and Thomas Jefferson's efforts to dissolve the Anglican Church in Virginia. For those who supported the separation of church and state, Madison's "Memorial and Remonstrance against Religious Assessments," written in 1785 to protest the use of public funds in Virginia to pay Christian teachers (Padover, 1953: 299–306), and Jefferson's "Bill for establishing religious freedom" in Virginia, intended in 1779 and passed into law in 1786 (Padover, 1953: 299–306), were crucial texts.

In 1947, the United States Supreme Court provided the first detailed interpretation of the first amendment's "Establishment of Religion" provision; over 150 years after the texts were originally used.

In a letter to a Danbury, Connecticut, Baptist organization in 1802, President Jefferson stated that the first amendment's goal was to create "a wall of separation between Church and State." Chief Justice Waite of the court described the line as "nearly an authoritative declaration of the scope and effect of the amendment" in Reynolds v. United States of America, 98 U.S. 145, 164 (1879). When the court first faced challenges to governmental programs based on religious grounds, it looked to Jefferson's metaphor for important direction.

Jefferson's "Wall of Separation"-a rigorous understanding of Church - has been criticised by D.E. Smith for how it applies to the relationship between Church and State in the United States. Not all Americans at the time agreed with state separation, and they still do not. The fact that the division is not absolute is attested to by the appointment of Protestant, Catholic, and Jewish chaplains in the armed forces, the tax exemptions given to churches and synagogues, and the fact that state and federal parliamentary session begin with prayer. Nonetheless, over the course of 170 years of American history, the fundamental tenets of religious freedom and church-state separation have been steadfastly upheld with very few exceptions. The intrinsic importance or the impact of this enormous experiment cannot be overstated (Smith, 1963: 17).

John F. Kennedy said, "Finally, I believe in an America where religious intolerance will someday end-where all men and all Churches are treated as equal-where every man has the same right to attend or not attend the Church of his choice-where there is no catholic vote, no anti-Catholic vote, and no bloc voting of any kind and where Catholics, protestants, and Jews, at both the lay and pastoral level, will refrain from those attitudes of disdain and division which have so often marred their works in the past and promote the American ideal of brotherhood."

Landmark verdicts of USA Courts for Strengthening Secular character of the State

Despite the first amendment's addition to the Constitution in 1791, the Supreme Court did not provide a thorough definition of the separation of church and state in the Constitution until 1947, in the case of Everson v. Board of Education, 330 U.S. 1, 15 (1947). The United States Supreme Court effectively declared in 1947 that a "high and impregnable" wall had been built between Church and State thanks to the first amendment. The court's ruling supported its expansive view of the constitutionally mandated separation of church and state by citing a carefully chosen selection of historical cases and records. Since the Everson ruling thirty-five years ago, the Supreme Court has consistently relied on historical analysis to bolster its numerous rulings in "Church State" issues.

According to Board of Education v. Allen, 392 U.S. 236, 249 (1968), the idea of neutrality is "a coat of many colours," and three principles that could be stated objectively arose as tests of the legitimacy of the Establishment clause. The initial pair of criteria was included in the same formulation. The test could be expressed as follows: What are the main goals and outcomes of the enactment? If the statute is for the advancement or inhabitation of religion, it goes beyond the limits of the legislative power as set forth in the Constitution. This means that, in order to avoid being overturned by the Establishment clause, legislation must have a secular goal and a main result that neither promotes nor restricts religion (Abington School District v. Schempp 374 U.S. 203), 222 (1963).”). The third test is whether the Government entangles with religion? The test is inescapably one of degree……. the questions are whether the involvement is excessive, and whether it is a continuing one calling for official and continuing surveillance leading to an impermissible degree of entanglement? (Walz v. Tax Commn 397 U.S 664, 674-75 (1970). In 1971 these three tests were combined and restated in Chief Justice Burger’s, opinion for the court in Lemon v. Kurtzman 403 U.S. 602, 611-613 (1971).

It goes without saying that a government that keeps religion and politics apart cannot designate any one faith as its official religion, like the Church of England. It also implies that religious affairs cannot be influenced by the government. For instance, the Court decided in Watson v. Jones, 80 U.S. (13 Wall.) 679 (1871) that a Presbyterian Church disagreement could only be settled by church officials rather than in court. In Kedroff v. St. Nicholas Cathedral, 344 U.S. 94 (1952), a case involving the Russian Orthodox Church, the Court held that

even in cases where a foreign nation hostile to the United States was exercising church authority, the federal government could not intervene.

For example, there has been much discussion in the US about school prayer. According to polls, the majority of Americans support allowing prayer in public schools. However, the Supreme Court ruled in Engel v. Vitale5, 344 U.S. 94 (1952), that the Establishment Clause forbids the use of any prayer in public schools, not even a nondenominational prayer that does not originate from a particular faith. Thus, it follows that readings from the Bible or other religious materials are obviously prohibited in public classrooms.

Public school curricula also have been the subject of Establishment Clause cases. In Epperson v. Arkansas, 393 U.S. 97 (1968), the Supreme Court considered:

A state law that outlawed the teaching of evolution, the scientific theory those humans descended from monkey-like ancestors. The Court said prohibiting the teaching of evolution violated the Establishment Clause because it was designed to promote creationism, a religious belief that humans were created directly by God. As of 2000, states continued to wrestle with laws requiring schools to teach creationism, evolution, and both or neither.

This confusion led the Court in Lemon v. Kurtzman, 403 U.S. 602 (1971), to adopt a three-part test. This test is quoted as under:

For determining when a law violates the Establishment Clause. Under the Lemon test, a law is valid if it: (1) has a secular, or non-religious, purpose; (2) has a main effect that neither advances nor restricts religion; and (3) does not foster excessive entanglement, or mixing, between religion and government.

The issue concerned two state laws: one that allowed the state to "purchase" services from religious schools in secular domains, and the other that allowed the state to pay a portion of the wages of private school teachers, including those who work in religious institutions. The relevant statutes were declared unlawful by the Supreme Court on the grounds that the government was "excessively entangled" with religion. The new judges, however, subsequently determined that the Lemon test was excessively rigid and even "hostile" towards religion. It was no longer thought that supporting certain religious practices equated to endorsing them. The test was limited to use in specific situations.

One viewpoint began to predominate: Just because the government is neutral towards religion and cannot give it preferential treatment—as determined by the ruling in Wallace v. Jaffree, 472 U.S. 38 (1985)—does not mean that religion is completely prohibited. Churches and religious organizations may not be excluded from regularly provided public services, such as those pertaining to public health and safety, which are typically provided to everyone. The 1984 federal Equal Access Act was upheld by the Court in Westside Community Board of Education v. Mergens, 496 U.S. 226 (1990), wherein it was decided that secondary school students could hold meetings of their religious clubs on public school property during non-instructional time, provided that the facilities were also available for other secular student club activities. The main distinction was that, aside from ensuring safety, school staff were not allowed to participate actively in religious club meetings. In Rosenberger v. University of Virginia, 515 U.S. 819 (1995), the Court considered whether school funding support of a campus religiously orientated newspaper violated the Establishment Clause because the funding program was otherwise applied neutrally to all school organisations. This case brought up the neutrality issue once more. In actuality, refusing to provide such money would be against the Free Speech Clause of the Constitution.

CONCLUSION

In summary, while both India and the United States uphold secularism as a guiding principle, their interpretations and implementations of this concept diverge significantly due to their unique cultural and historical contexts. The Indian State is characterised by secular nature and employs many strategies to avoid religious hegemony and one such model is "principled distance,". It allows the state to engage with religious affairs in a neutral manner, ensuring equal respect for all faiths. This approach is also embedded in the Indian Constitution, which explicitly guarantees religious freedoms and emphasizes the state's role as an impartial arbiter among diverse religious groups. Nevertheless, it should be noted that there are instances of violations

of fundamental as well as legal rights in Indian society. However, being aware of the existence of rights guaranteed by the State makes us attentive to their infringements and empowers us to respond when such breaches occur.The Supreme Court has also reinforced this secular character, asserting that it is a fundamental aspect of Constitution that cannot be altered by parliamentary action. Thus, Indian secularism promotes not just tolerance but active support for religious diversity, as reflected in Articles 25-28 of the Constitution.

Conversely, American secularism is rooted in a strict separation of church and state, often described as an "iron wall." This principle is enshrined in the Establishment Clause of the First Amendment, which prohibits the government from endorsing or funding religious activities. The U.S. model emphasizes passive neutrality, meaning that while the state does not actively promote religion, it also does not intervene in religious matters unless necessary. This has led to ongoing debates and court cases that sometimes blur the lines between religious freedom and government endorsement of religion. Therefore, the contrasting frameworks of secularism in India and the United States reflect broader societal values and historical trajectories. India's secularism, with its emphasis on inclusivity and active engagement, stands in stark contrast to America's more rigid separationist stance. Understanding these differences is crucial for appreciating how each nation navigates the complexities of religion in public life, and it may offer valuable insights for future judicial advisements on secularism in both contexts. The evolving nature of secularism, influenced by contemporary challenges such as religious extremism and the demand for religious education, necessitates ongoing dialogue and adaptation within both legal systems.

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